

BEFORE THE FEDERAL ELECTION COMMISSION

2015 DEC 14 PM 1:23

In the Matter of)	
)	DISMISSAL AND CASE
MUR 6646)	CLOSURE UNDER THE
Strickland for Congress 2012)	ENFORCEMENT PRIORITY
and Lysa Ray as treasurer)	SYSTEM
Matthew Doheny)	CELA
David Hilty)	

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances or, where the record indicates that no violation of the Act has occurred, to make no reason to believe findings. The Office of General Counsel has scored MUR 6646 as a low-rated matter¹ and has determined that it should not be referred to the Alternative Dispute Resolution Office.

For the reasons set forth below, the Office of General Counsel recommends that the Commission find no reason to believe that Respondents Matthew Doheny ("Doheny") and David Hilty ("Hilty") violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1). The

¹ The EPS rating information is as follows: Complaint Filed: September 14, 2012. Response from Strickland for Congress 2012 Filed: September 27, 2012. Response from David Hilty Filed: October 31, 2012. Response from Matthew Doheny Filed: November 7, 2012.

1 Office of General Counsel also recommends that the Commission exercise its prosecutorial
2 discretion and dismiss MUR 6646 as to Respondents Strickland for Congress 2012 and Lysa
3 Ray in her official capacity as treasurer (collectively the "Committee").²

4 Complainant Julia Brownley³ alleges that the Committee accepted contributions from
5 two individuals in excess of the limitations of the Act. Compl. at 1. Complainant bases her
6 allegations on information from the Committee's 2012 July Quarterly Report ("July Quarterly
7 Report"), which discloses two contributions from Respondents Matthew Doheny and David
8 Hilty, each totaling \$5,000. *Id.* at 1-2; *see also id.*, Attach. A at 1-3 (pages from July
9 Quarterly Report disclosing Doheny and Hilty contributions). The Committee reported
10 receiving the contributions on June 28, 2012, after California's June 5 primary election. *Id.*
11 The July Quarterly Report reflects that the Committee designated \$2,500 of each contribution
12 to both the primary and general elections. *Id.*⁴ The Complainant asserts that the Committee
13 could only designate the contributions to the primary election if both Doheny and Hilty "made
14 their contributions on or before June 5," the primary election date, and the Committee
15 deposited them within ten days of receipt. *Id.* at 2. Furthermore, the Complainant states that
16 the Committee disclosed no primary debt, and as such, "had no debts for which the
17 contributions could have been intended to retire," thus presumably exceeding the applicable
18 limitations of the Act.⁵ *Id.*

² Strickland for Congress 2012 is an authorized campaign committee of Anthony A. Strickland, an unsuccessful candidate in the 2012 general election for California's 26th Congressional District.

³ Complainant defeated Strickland in the 2012 general election, and currently represents the 26th Congressional District.

⁴ *See also* Committee's amended 2012 July Quarterly Report, filed on September 5, 2013, at 40-41, 43-44.

⁵ The Act and Commission regulations prohibited individuals from making contributions to any candidate and his authorized committees in excess of \$2,500 per election during the 2011-2012 election cycle.

1 The Committee responds that Doheny and Hilty made their contributions via credit
2 card prior to the primary election, and that “it was both” Doheny’s and Hilty’s “intent to
3 contribute towards the Primary Election.” Committee Resp. at 1. The Committee also
4 maintains that it attempted to process the credit card transactions before and after the primary
5 election, but could not “get them through” until “the date in question” (*i.e.*, June 28, 2012).
6 *Id.* The Committee states that “[s]ince [the] donations were dated before the election . . . they
7 were to be applied to the Primary.” *Id.* The Committee adds that it deposited the
8 contributions within the ten-day period after processing the transactions. *Id.*

9 The Committee’s Response includes copies of contribution information forms from
10 Doheny and Hilty, which reflect \$5,000 in contributions from their respective credit card
11 accounts. *Id.* at 3, 5. The undated forms do not indicate an election designation, although a
12 statement on each form states that “[f]or contributions to both the primary and general
13 election funds, individuals may contribute up to \$5,000” *Id.* The bottom of each form
14 also provides that “[a]n individual may contribute up to \$2,500 for the primary election and
15 up to \$2,500 for the general election. Individuals may write one check for \$5,000 and
16 indicate ‘Primary/General’ in the memo of the check.” *Id.* The forms do not appear to
17 include guidance on designating credit card contributions.

18 The Committee’s Response also includes two copies of what appear to be computer-
19 generated forms labeled “Donation Report” from a Committee consultant. *Id.* at 2, 4.
20 *See also* Doheny Resp., Ex. A (stating that Committee consultant Joe Justin provided internal
21 donation reports documenting the June 4, 2012 contributions). Each report displays the

1 contributor's name, address, occupation, and employer information, and reflects the date at
2 the top and bottom of each document. Committee Resp. at 2, 4.

3 If the Committee received the contributions prior to the primary election on June 5,
4 2012, it would be permitted to redesignate any excessive portions to the general election.
5 Under 11 C.F.R. § 110.1(b)(6), "a contribution shall be considered to be made when the
6 contributor relinquishes control over the contribution." *See also* 11 C.F.R. § 102.8 (stating
7 "Date of receipt shall be the date such person obtains possession of the contribution"). Here,
8 Doheny and Hilty appeared to have relinquished control of their contributions on June 4,
9 2012, as reflected by the "Donation Reports." Committee Resp. at 2, 4. Accordingly, the
10 Committee should have reported the date of receipt in its July Quarterly Report as June 4, not
11 June 28. *See* 11 C.F.R. § 104.8 (requiring a political committee to report the date of receipt
12 for contributions).

13 The record reflects that half of each contribution was apparently intended to be
14 designated to the primary and general elections, respectively. Specifically, the Doheny
15 "Donation Report" reflects that he contributed a total of \$5,000, and designated \$2,500 each
16 for the primary and general elections, via a payment through his VISA credit card on June 4,
17 2012. Committee Resp. at 2. In addition, the report displays a handwritten notation that
18 states, "\$5,000 – processed & already in," along with "G12 - \$2500" and "P12 - \$2500." *Id.*
19 Separately, Doheny confirms that he made his contribution of \$5,000 on June 4, 2012, not on
20 June 28, 2012, as the Complaint alleges. Doheny Resp. at 1-2.⁶

21 Similarly, the Hilty "Donation Report" reflects that he contributed a total of \$5,000,
22 and designated \$2,500 each for the primary and general elections, making payment through

⁶ Doheny requested a refund of his primary contribution "out of an abundance of caution," though to date, the Committee has not disclosed any such refund. *Id.*, Ex. B.

1 his American Express credit card on June 4, 2012. Committee Resp. at 4. Hilty's report also
2 displays a handwritten note that states, "\$5,000 Amex – processed and already in," as well as
3 "6/28/12," "G12 P12, \$2,500 each." *Id.* Separately, Hilty responded that he made a \$5,000
4 contribution to the Strickland campaign on June 4, 2012, "by providing a signed credit card
5 authorization form," and that it represented a \$2,500 contribution to the primary election and
6 a \$2,500 contribution to the general election. Hilty Resp. at 1. Hilty contends that he "has no
7 knowledge of how his contribution was handled by [the Committee] after he relinquished
8 control," and "has no knowledge as to why his 2012 primary contribution was reported . . .
9 disclosing a contribution date of June 28, 2012." *Id.*⁷

10 The record suggests that Doheny and Hilty made their contributions before the
11 primary election. The instructions on the contributor information forms provided guidance as
12 to how each contributor could designate his contribution where a check was used. Committee
13 Resp. at 3, 5. There was no guidance given on the form addressing credit card contributions.
14 Since the form permitted contributors to make a \$5,000 donation and Doheny and Hilty made
15 their contributions before the primary election, the Committee could have presumed the
16 contributions were intended to be apportioned between the primary and general elections.
17 See 11 C.F.R. § 110.1(b)(5)(ii)(B). In light of the timing of the contributions, the lack of
18 instructions provided by the Committee concerning the use of credit cards, and the ability of
19 the Committee to seek redesignation of the contributions, the Office of General Counsel
20 recommends that the Commission find no reason to believe that Respondents Matthew

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⁷ Hilty requested a refund of his primary contribution "out of an abundance of caution," though to date, the Committee has not disclosed any such refund. *Id.*, Ex. B.

1 Doheny and David Hilty violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

2 Although the Committee could redesignate the excessive portions of the contributions,
3 the regulations require that it provide notice to the contributors of the amount it redesignates
4 and the opportunity to request a refund. *See* 11 C.F.R. § 110.1(b)(5)(ii)(B)(5). The
5 Committee did not appear to provide the required notice. Further, the Committee seems to
6 have misreported the date it received the contributions on its July Quarterly Report, in
7 violation of 11 C.F.R. § 104.8.⁸ In light of the amounts at issue and the fact that the
8 contributions appear to have been intended to be split between the primary and general
9 elections, the Office of General Counsel recommends that the Commission exercise its
10 prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), to dismiss this
11 matter as to Strickland for Congress 2012 and Lysa Ray in her official capacity as treasurer.
12 Additionally, the Office of General Counsel recommends that the Commission approve the
13 attached Factual and Legal Analyses and the appropriate letters, and close the file.

14 **RECOMMENDATIONS**

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16 1. Find no reason to believe that Matthew Doheny violated 52 U.S.C. § 30116(a)(1)(A)
17 and 11 C.F.R. § 110.1(b)(1);
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19 2. Find no reason to believe that David Hilty violated 52 U.S.C. § 30116(a)(1)(A) and
20 11 C.F.R. § 110.1(b)(1);
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22 3. Dismiss the matter as to Strickland for Congress 2012 and Lysa Ray in her official
23 capacity as treasurer;
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⁸ The Committee explains it received both contributions before the primary election but was unable to process them until June 28, 2012. It also did not backdate the contributions in its July Quarterly Report because it "thought that [it was] improper." Committee Resp. at 1.

4. Approve the attached Factual and Legal Analyses and the appropriate letters; and

5. Close the file.

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10/14/15
Date

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